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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,175	03/26/2004	Jerald C. Seelig	619,708	8014
21707 7590 07/31/2009 IAN F. BURNS & ASSOCIATES 4790 Caughlin Parkway #701 RENO, NV 89519-0907				
EXAMINER MCCELLAN, JAMES S				
ART UNIT 3714		PAPER NUMBER		
NOTIFICATION DATE 07/31/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pto@nevadapatentlaw.com  
pjpanzica@nevadapatentlaw.com

### Office Action Summary

**Application No.**

10/810,175

**Applicant(s)**

SEELIG ET AL.

**Examiner**

JAMES S. MCCLELLAN

**Art Unit**

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 9, 17, 33, 34, 37 and 43-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9, 17, 33, 34, 37, and 43-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

#### *Request for Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/3/08 has been entered.
2. The response of 9/3/08 amends claims 1, 17, 33, 34, 37, 43, and 45. Further, claims 47-49 were added. Therefore, claims 1-3, 9, 17, 33, 34, 37, and 43-49 are pending

#### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 9, 17, 33, 34, 37, and 43-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Non-Patent Literature Document entitled *Slot Machines, A Pictorial History of the First 100 Years* (5th Edition) by Fey in view of U.S. Patent No. 6,336,863 to Baerlocher.

With regard to **claim 1**, Fey discloses a gaming apparatus (p. 70, Fey 1907 Silver Cup machine) comprising: a housing (see p. 70); at least one indicium representing at least one prize (see p. 70, "10", "25", "50", "1<sup>00</sup>", and "2<sup>00</sup>"; each representing a total number of cents); a

plurality of display characters, at least one of the plurality of display characters being configured to move (e.g., see what appears to be a trophy on each dial, wherein each of the trophies move around the dial axis), wherein the at least one display character: comprises the at least one indicium therein (e.g., "2<sup>00</sup>"); and is moveable between at least a first position and a second position (e.g., each trophy moves about a dial axis); and a controller (e.g., the handle) in communication with the at least one of the plurality of display characters and being configured to direct movement thereof; wherein the controller is configured to move the at least one of the plurality of display characters to the second position to display the at least one indicium that corresponds to the game outcome (e.g., see Summary on upper right-hand side of p. 70);

[**claim 2**] wherein the plurality of display characters are three-dimensional (the dials are three-dimension, therefore the characters are 3-dimensional);

[**claim 3**] the at least one of the plurality of display characters is further configured to move in a choreographed manner (e.g., each of the trophies moves about the dial axis);

[**claim 9**] at least one actuator coupled to the at least one of the plurality of display characters and in communication with the controller, wherein the controller is configured to cause the at least one actuator to move the at least one of the plurality of display characters (e.g., actuator is the link between the handle and the dials);

[**claim 17**] at least a portion of the at least one display character further comprises a changeable display area (e.g., the rotating front surface of the dial) and the at least one indicium appearing on the at least one display character is displayed on the changeable display area;

[**claim 43**] wherein the at least one of the plurality of display characters is configured to move to its maximum move range relative to other display characters to display the at least at least one indicium representing the at least one prize (e.g., see the rotating trophies on p. 70);

[**claim 44**] the one of the plurality of display characters is configured to move to an extended position relative to other display characters (e.g., any point about the dial axis may be the "extended position" relative to the other display character), wherein each of the display characters in extended position indicates an indicium representing a prize, wherein a player is awarded a mathematical combination of prizes indicated by the display characters in the extended position (e.g., see p. 7; awarding a prize of "2<sup>00n</sup>"); and

[**claim 48**] the at least one indicium appearing on the at least one display character is: hidden from a player when the least one display character is in the position (e.g., when the trophy on the left most dial is at a point most distant from the axis of the right most dial, the trophy will be hidden from a player by the housing when the player is viewing the left most dial at an angle consistent with the angled view the upper left picture on p. 70; notice that the award numbers are hidden on the left most side of the left dial); and viewable by the player when the at least one display character is in the second position (e.g., the position of the trophy on the left most dial in the upper left-hand picture; notice the trophy is viewable in that position).

With regard to **claim 1**, Fey fails to disclose the controller being configured to generate a random number and generate a game outcome based on the random number.

Bacrlochher teaches a gaming machine that includes a controller being configured to generate a random number and generate a game outcome based on the random number (e.g., controller 42).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fey's Silver Cup with a modern controller that uses a random number generator as taught by Baerlocher to allow the gaming machine owner better control over the payout of the gaming machine.

The combination of Fey and Baerlocher make obvious **claims 33, 34, 37, and 49** directed to a gaming device for the same reasons as set described above for similar claims 1-3, 9, 17, 43, 44, and 48. Likewise, the combination of Fey and Baerlocher make obvious **claims 45-47** directed to a gaming method for the same reasons as set described above for similar claims 1-3, 9, 17, 43, 44, and 48.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 33, and 45 have been considered but are moot in view of the new ground(s) of rejection. That is, a different gaming device discloses in Fey is relied upon in the current rejection.

#### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES S. MCCLELLAN whose telephone number is (571) 272-7167. The examiner can normally be reached on Mon-Fri (8:30AM-5:00PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on (571) 272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES S. MCCLELLAN/  
Primary Examiner, Art Unit 3714